

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,496

435

ALFRED CERCEO, *et al.*,

Appellants,

—v.—

A. V. CERCELL, *et al.*,

Respondents.

**PETITION FOR REHEARING—
REHEARING EN BANC**

*To the Honorable Judges of the United States Court of
Appeals for the District of Columbia:*

Petitioner, Alfred Cerceo, respectfully presents his petition for a rehearing and rehearing *en banc* in the captioned case, and in support cites the following grounds.

Facts and Discussion

My mother requested the transfer of property at 110 E St., N. W. in Washington, D. C. because of difficulties at home. Mr. Cercell wrote letters, stating because of the troubles, something had to be done. J. C. Grove, wrote letters requesting that her name be taken out of the will. The many requests in the matter, I prepared a deed which was signed before a lawyer-notary. The deed was not recorded for some time in the hope that everything would "clear up". The fights started again and my mother requested that the deed be recorded.

Suit was filed in the District Court against me, my wife and my brother, Victor Cerceo, as defendants. Victor Cerceo was given property rights in the will, with A. V. Cercell, J. C. Grove and Adel C. Scogna. Victor Cerceo was a plaintiff. Mrs. Adel C. Scogna was not named in the suit.

Several motions were filed requesting all parties be named in the litigation. The Court denied the motions.

Motion for summary judgment was filed by the defendants in the case as provided by the Rules of Civil Procedure; no action was taken by the court. The respondents did not file objections. The motion for summary judgment is open and not disposed.

Griffin v. Griffin, 327 U. S. 220.

Affirmative defenses were filed by defendants, plaintiffs did not file replies. Open and outstanding.

Motions to dismiss were filed, because A. V. Cercell and J. C. Grove, were not authorized to file the suit. No provisions to file suit were made by the will.

Mr. Beasely filed two affidavits, dated September 9, 1962, and October 9, 1962, both affidavits have been filed with the Civil Action 420-59 and are part of the record in this case.

Affidavit October 9, 1962, Page 2, Par. 3.

"From the outset Mr. Cerceo endeavored to create the impression that the case was really a family squabble in which Mrs. Cerceo influenced her son and her daughter Mrs. J. C. Grove. But they were never parties to the action in any way until after Mrs. Cerceo died and they were substituted as plaintiffs by virtue of being executors under Mrs. Cerceo's will."

Letter of Cercell June 24, 1959.

" * * * action instituted by me and my sister Josephine.
Exh. D."

Subornation of Perjury

"I have not told mama about this new deed that was recorded. I'll just tell her Monday that I am engaging a lawyer. So do not alarm her by telling her of this unsatisfactory condition."

Letter of Cercell, December 12, 1958. Exhibit A.

Affidavit of Mr. Beasely, October 9, 1962, Page 5, Par. 2.

"He next refers to a letter photocopy of which he attaches, a copy from Dr. Cercell to other members of the family. He attached a copy of this letter to a pleading in the case. I had no knowledge of this letter, but I understand that Dr. Cercell was concerned about telling his mother anything about the deed of a life estate back to her because of her physical condition and he did not want to take a chance of her suffering a stroke from excitement."

Property

Affidavit of Mr. Beasely, Page 4, Par. 1.

"The only knowledge of these other properties that I have is from casual conversations with Dr. Cercell and Mrs. Grove. I have not accepted any employment or taken any action in connection with either of them. I understood there was some litigation in Annapolis, Maryland, in reference to the Maryland property but I am not familiar with details. Mrs. Cerceo's refer-

ence was to the West Virginia property and makes provision for title to be conveyed to Alfred Cerceo if he returned her home property to her. He did not do so, and I understand that the executors feel that they are under no obligation under the terms of the will to make any conveyance to Mr. Cerceo; but as indicated above I had nothing to do with that property and have taken no action in reference to it. I therefore do not feel called upon to discuss what has been merely conversation advises to me in reference thereto * * *

The 5th paragraph of the complaint prepared and filed by Mr. Beasely, with reference to the real property follows.

"Aside from a small amount of cash, household furnishings and personal effects, plaintiff's sole asset of any value is her home premises No. 110 E St. N. W. the same being of lot 31, in square 571 in the District of Columbia, together with improvements consisting of a row of brick houses thereon as defendant Alfred Cerceo well knew."

Further subornation of perjury caused by Mr. Beasely.

Exhibit E, Cercell, "Mother lost mind." June 6, 1960.

Court may set aside for after discovered fraud upon the court.

Hazel Atlas Co. v. Hartford, 322 U. S. 238;

Dasuel v. Dasuel, 195 F. (2) 75, 90 U. S. Appeal, 274;

Jungsen v. Axel Bros. Inc. et al., 121 F. Supp. 712.

All persons in interest to be included in the action.

Hanseberry v. Lee, 311 U. S. 32;

Mayflower Hotel Stock v. Mayflower Hotel, 173
F. (2) 416.

Same person cannot act for himself and at the same time with respect to the same matter for others.

Misrepresentation by respondents.

The applicants filed a motion to dismiss the judgment because of the fraudulent acts by A. V. Cercell, J. C. Grove, and the attorney of subornation of perjury, conspiracy and misrepresentation. The suit was filed without the consent of my mother. The will was fraudulent. The denial of the application and the order forbidding the filing of any other papers without the approval of the court, did not dismiss or strike the offense of fraud charged to the parties herein by the defendant.

Mr. A. B. Beasely filed two sworn affidavits which were filed in case No. 420-59.

Atlas Co. v. Hartford, 322 U. S. 278.

Mr. Justice Black:

" * * * the public welfare demands that the agencies of Justice be not so impotent that they must be mute and helpless victims of deception and fraud."

Dasuel v. Dasuel, 195 F. (2) 774, 90 U. S. Appeal
274.

Mr. Justice Edgerton:

" * * * after discovered fraud 28 U. S. A. expressly does not limit the power of the court to entertain an action for that purpose."

WHEREFORE, it is respectfully urged that this Court grant a rehearing *en banc* and that it vacate "application is hereby denied" and dismiss the judgment or grant hearing, on Summary Judgment and affirmative defense.


ALFRED CERCEO

Defendant and Attorney for Applicants

I hereby certify that the foregoing petition is presented in good faith and not for delay.

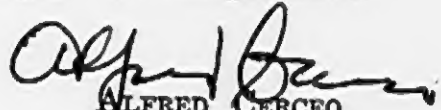

ALFRED CERCEO
Allenhurst, N. J.

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